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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

NO. .....

STEPHEN J. OLAH,
Petitioner,

v.

GARVIS L. SAMS, et al,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

Stephen J. Olah petitions this Court for a writ of certiorari to review the judgment and opinion of the Supreme Court of Georgia entered in the case of *Sams et al v. Olah*, No. 25292, 225 Ga. ... (... S.E. 2d ...), the respondents above being the appellants below, and the petitioner being the appellee, rendered on the 15th day of September 1969, and motion for rehearing being denied on the 29th day of September, 1969. A stay of the remittitur was granted for 90 days from September 29, 1969, and until the petition to the Supreme Court of the United States is finally disposed of, the same reading as follows:

"Upon consideration of the foregoing application filed in this case, for a stay of the remittitur, the clerk of this court is hereby directed to withhold the transmittal of the remittitur to the trial court for ninety (90) days from September 29, 1969, and until the petition to the Supreme Court of the United States for a review by that court of the judgment of this court is finally disposed of. Provided that promptly upon the filing of such an application in the Supreme Court of the United States, counsel for the applicant shall notify the clerk of this court thereof in writing or, if no such application be filed in that court within the said 90-day period or within an authorized extension thereof, counsel for applicant shall in writing, promptly notify the clerk of this court thereof and in writing consent that the stay of the remittitur be released.

"This 2 DAY OF October , 1969.

"s/ BOND ALMAND
Chief Justice"

OPINIONS BELOW

The opinions and judgment of the Supreme Court of Georgia have not been reported, but are appended hereto. Likewise, the opinion and judgment in *Wallace v. Wallace*, 225 Ga. 102 (... S.E. 2d ...), should be referred to in any decision on the merits. In addition for further clarification, the order appealed from in the court below is also appended.

JURISDICTION

The judgment of the Supreme Court and the motion for rehearing thereof were denied as shown above. The statutory provision which is believed and contended to confer jurisdiction on this Court to review the judgment by certiorari is U.S.C. 1257(3), since a right, privilege and immunity is specially claimed under the Constitution of the United States.

QUESTIONS PRESENTED FOR REVIEW

The questions presented are:

1. WHETHER OR NOT AN ATTORNEY AT LAW, WHO IS A CITIZEN OF THE UNITED STATES AND A CITIZEN OF THE STATE OF GEORGIA, AND WHO IS DULY ADMITTED TO THE PRACTICE OF LAW IN THE STATE OF GEORGIA, MAY BE CONSTITUTIONALLY RESTRICTED AS TO SUCH PRACTICE BY RULES OF A CORPORATE ENTITY, AUTHORIZED BY LEGISLATIVE ACT AND CREATED BY THE SUPREME COURT OF GEORGIA IN VIEW OF LACK OF AUTHORITY, SAID ENTITY AS HEREAFTER SPECIFICALLY POINTED OUT?

2. WHETHER THE ACT OF THE GENERAL ASSEMBLY OF GEORGIA (GA. L. 1963, PP. 70-72) PURPORTEDLY AUTHORIZING THE SUPREME COURT OF GEORGIA TO GRANT A CHARTER TO AND CREATE SAID ENTITY (STATE BAR OF GEORGIA) IS VIOLATIVE OF THE CONSTITUTIONS OF THE STATE OF GEORGIA AND OF THE UNITED STATES OF AMERICA?

3. WHETHER OR NOT, IRRESPECTIVE OF SAID ACT OF THE GENERAL ASSEMBLY (GA. L. 1963, PP. 70-72) THE SUPREME COURT OF GEORGIA IS AUTHORIZED

TO CREATE SUCH ENTITY (STATE BAR OF GEORGIA) UNDER CLAIMED OR SUPPOSED "INHERENT POWER" HELD BY THE SUPREME COURT OF GEORGIA?

4. WHETHER SUCH ATTORNEY MAY BE CONSTITUTIONALLY DEPRIVED OF RIGHTS GUARANTEED TO HIM BY THE FIRST, FIFTH, AND FOURTEENTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA BY AND THROUGH PURPORTED RULES AND ORDERS PROMULGATED BY SAID ENTITY, TO-WIT: STATE BAR OF GEORGIA?

5. WHETHER OR NOT SUCH ATTORNEY MAY BE REQUIRED BY AND THROUGH ORDERS AND RULES PROMULGATED BY SAID ENTITY, TO-WIT: STATE BAR OF GEORGIA, TO PAY AN ANNUAL LICENSE FEE FOR THE PRIVILEGE OF PRACTICING LAW?

6. WHETHER OR NOT SAID ENTITY, STATE BAR OF GEORGIA, MAY CONTROL THE PRACTICE OF LAW IN GEORGIA BY TAKING COMPLETE CHARGE OF SAID PRACTICE OF LAW AND BY ISSUING ORDERS OF REPRIMAND, SUSPENSION, DISCIPLINE, AND DISBARMENT?

7. WHETHER OR NOT THE GEORGIA LAW OF 1963, PP. 70-72, PURPORTING TO AUTHORIZE CREATION OF SAID ENTITY, TO-WIT: STATE BAR OF GEORGIA, IS INVALID AND VIOLATIVE OF THE CONSTITUTIONS OF GEORGIA AND OF THE UNITED STATES, PARTICULARLY IN THAT SAME IS IN DEROGATION OF AND BEYOND THE AUTHORITY OF THE LEGISLATIVE BRANCH TO ADOPT AND BEYOND THE JUDICIAL BRANCH TO CREATE, ADMINISTER, ESTABLISH AND CONTROL, UNDER THE AFORESAID LAW AND UNDER ANY CLAIMED OR SUPPOSED INHERENT POWER OF THE SUPREME COURT OF GEORGIA?

8. WHETHER OR NOT THE STATE BAR OF GEORGIA MAY CONTROL THE LAWYERS AND THE PRACTICE OF LAW IN GEORGIA IN VIEW OF THE FACT THAT THE SOVEREIGN PEOPLE OF THE STATE OF GEORGIA HAVE, BY CONSTITUTION, ESTABLISHED AND PROVIDED THEREIN FOR THE SEPARATION OF POWERS BY AND BETWEEN THE EXECUTIVE, LEGISLATIVE AND JUDICIAL BRANCHES; AND FURTHER, SAID SOVEREIGN PEOPLE HAVE CREATED, BY CONSTITUTION, A SUPREME COURT OF GEORGIA WITH EXTREMELY LIMITED JURISDICTION, AND CLEARLY NEVER INTENDED SAID SUPREME COURT OF GEORGIA TO TAKE UNTO ITSELF SUCH POWER?

9. WHETHER OR NOT THE STATE BAR OF GEORGIA MAY CONTROL THE LAWYERS AND THE PRACTICE OF LAW IN GEORGIA IN VIEW OF THE FACT THAT THE SOVEREIGN PEOPLE OF THE STATE OF GEORGIA, BY CONSTITUTION, SPECIFICALLY LIMITED THE LEGISLATIVE BRANCH AS TO THE METHOD OF ADOPTING LEGISLATION WHEREBY THE AFORESAID LEGAL ENTITY, STATE BAR OF GEORGIA, IS NULL AND VOID AS A LEGAL ENTITY, AND TOTALLY WITHOUT AUTHORITY OF ANY VALID WRITTEN LAW, AND IS COMPLETELY WITHOUT INHERENT POWER TO CREATE SAID ENTITY AS IT HAS SOUGHT TO DO IN THIS INSTANCE?

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment of the Constitution of the United States provides:

No law shall be made "abridging the freedom of speech, or of the press; or the right of the people peaceably to

assemble, and to petition *the Government* for a redress of grievances." (Italics mine.)

The Fifth Amendment of our Constitution provides:

No person shall be "deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Fourteenth Amendment of said Constitution provides:

No State shall "abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The petitioner was admitted to practice law in Georgia in accordance with the statutes made and provided for that purpose, and has done so for a number of years. In 1963, the Supreme Court created an entity, an incorporated bar, sometimes called the integrated bar, called the State Bar for the purpose of requiring all lawyers duly licensed in said State to be members of said State Bar, pay an annual license fee to it, and to be subject to the rules of said organization made and provided by the Supreme Court under and "pursuant to the Act of the General Assembly approved by the Governor on March 11, 1963 (Ga. L. 1963, p. 70)," the same being adopted by the General Assembly purportedly authorizing the Supreme Court of Georgia to do so. The order of the Supreme Court of Georgia, as stated to be pursuant thereto, and the rules made and provided being found in 219 Ga. Reports 875,

917; and amendments thereafter in 221 Ga. 885, 886; and again in 224 Ga. 879, 888, provided for complete control of lawyers and the practice of law in all courts of the State, including the right of suspension, reprimand, discipline and disbarment and payment of annual license tax. Under the equity powers of the courts, the petitioner brought an action to prevent his trial under alleged power of a tribunal of three lawyers in the circuit in which he resides, appointed by such State Bar, and prayed that the courts declare the law unconstitutional under named and stated clauses of the State and Federal Constitutions, and prays that the State Bar cease and desist this illegal practice. In the meantime, by a 4-3 decision, the Supreme Court declared it had inherent power to create the State Bar and make the rules as found in the decision of *Wallace v. Wallace*, 225 Ga. 102. A writ of certiorari to this court to review the Wallace decision has been requested and is now under advisement by this Court. Thereafter, by amendment, the right and authority of the Supreme Court to create and establish the State Bar and to promulgate rules for the control of the practice of law in this State under inherent power was likewise attacked as being without authority of law and beyond the rights conferred by either the State or Federal Constitutions; and it was alleged for this reason that all proceedings thereunder were null and void; and likewise, by amendment, the appointment of a receiver was requested to take over the organization thus created. After a hearing of a motion to dismiss the trial court issued its order denying the motion to dismiss, declared the act unconstitutional, and granted a temporary injunction (see appendix for full text).

On appeal the Supreme Court held, as it had held in *Wallace*, *supra*, it had inherent power or judicial power to create the State Bar; declared part of the act void; but

reversed the court in declaring the act unconstitutional and in granting a temporary injunction, but affirmed the court in its denial of the motion to dismiss since certain alleged illegal expenditures had been claimed in the petition.

The motion for rehearing which was denied points out each and every error of the court in rendering its decision reversing the trial court.

MANNER OF RAISING FEDERAL QUESTIONS

The petition alleges the law violates the First, Fifth and Fourteenth Amendments of the Federal Constitution as well as various clauses of the State Constitution. Of necessity, the ruling of the lower court was that the act was violative of each and every constitutional attack made. The Supreme Court of Georgia reversed, and the motion for rehearing pointed out each and every misconstruction, misinterpretation and error made by such court, including its denial of rights, privileges and immunities guaranteed to the petitioner by the Federal Constitution.

SUMMARY OF REASONS FOR ALLOWANCE OF WRIT

1.

The questions involved are of gravity and importance to all members of the Bar in Georgia and every other State having similar constitutional limitations as to the power of the Supreme Court to ascertain if their status as practicing members of the legal profession can be altered by the courts of the State in the manner thus set out.

2.

The questions involved are of gravity and importance in that all members of the legal profession who have been admitted to practice in the State courts for life have a property right to carry on such profession which cannot be taken from them without affording them due process of law by proper statutory and constitutional law.

3.

The Court erred in holding Ga. Law 1963, pp. 70-72 constitutional and that it had inherent power to perform the acts here complained of, since it has no original jurisdiction, and is a court alone for the correction of errors of law only, and then only from certain named courts, as to certain matters. It is a court of extremely limited jurisdiction and power, in fact, no other State Supreme Court in the United States is more limited and restricted.

4.

The Court erred in that it compounded its original error in violating this individual's constitutional rights, guaranteed him by the First, Fifth and Fourteenth Amendments of the Constitution of the United States.

ARGUMENT OF REASONS FOR ALLOWANCE OF THE WRIT

A person admitted to practice law in the courts of a State has a property right to maintain that status until such time as it is forfeited for some valid reason. The petitioner was duly admitted to practice law for life. Every license required of him to practice has been granted and the fees paid. Only a change in the law fully authorized

by the Constitution of Georgia; or authorization by the People by and through said Constitution (for the Supreme Court to have a superintending control over the entire practice of law) could change his status as a member of the bar or as a practicing lawyer. The right to practice law has been recognized as a "property right" that can only be taken away after due process of law. In re *Ruffalo*, 390 U.S. 544 (1968).

The power and jurisdiction of the Georgia Supreme Court is extremely limited by the People in its Constitution, being a "court alone for the trial and correction of errors of law from the superior courts and the city courts of Atlanta and Savannah" and such other like courts as have been or may hereafter be established, and has "no original jurisdiction," and may review only those cases as set out in said Constitution. See Code § 2-3704 (1933 Code of Georgia). In recent years efforts have been made to increase the power and jurisdiction of the Supreme Court of Georgia by various persons but as yet no constitutional amendment has been passed for adoption by the People. The Fifth and Fourteenth Amendments extend to the protection of lawyers. *Spevack v. Klein*, 385 U.S. 511.

Only the General Assembly in the State of Georgia has the power to make laws and same must be consistent with the Constitution of Georgia and not repugnant to the Constitution of the United States. Code § 2-1920 (Georgia Code of 1933). By our Constitution the legislative power is vested exclusively in the General Assembly of Georgia. Code § 2-1301 (Georgia Code of 1933). By our Constitution the legislative, judicial and executive powers in said State shall forever remain separate and distinct, and no persons discharging the duties of one, shall at the same time exercise the functions of either of the others, except as provided in said Constitution. Code § 2-123 (Georgia Code of 1933).

After the State Supreme Court issued an order and created a legal entity—The State Bar, "pursuant to the Act of the General Assembly approved by the Governor on March 11, 1963 (Ga. L. 1963, p. 70)," petitioner brought this action in equity to declare said law unconstitutional, null and void, for the many, many reasons set out in his petition. Whereupon, before a decision in his case could be reached, the Supreme Court in *Wallace v. Wallace*, No. 25034, 225 Ga. 102 (... S.E. 2d ...), held it created the State Bar under its "judicial power" or "inherent power." This decision was a split decision (4-2, and 1 absent; 4-3 on Motion for Rehearing). In the case sub judice it refused to declare the act unconstitutional, but declared part void, and adhered to the opinion and judgment in *Wallace*, all the Justices concurring. Both of these decisions are entirely erroneous inasmuch as the court was without authority of any constitutionally conferred jurisdiction to execute the original order creating the legal entity—State Bar—through legislation (here attacked as being null, void and unconstitutional), or any inherent power of the court to control all other courts in the State, including all the members of the bar practicing before all courts. We respectfully contend the Court erred in rendering its opinion and judgment and in doing so violated—

—his freedom of speech (monies illegally collected from him are used against his will to write and speak against his interest);

—his freedom of the press (for the same reason as above);

—his freedom of association (forced to join an association against his will).

These rights are guaranteed to him by the First Amendment of the Constitution of the United States. Code § 1-801 (Ga. Code of 1933).

We also respectfully contend it likewise violated the Fifth Amendment of the Constitution of the United States in that it deprived complainant of his property without due process of law, there being no legal or constitutional authority for collecting fees from him, and in attempting to disbar, suspend and discipline him, thereby taking from him a valuable property right without any legal authority to do so. His private property (fees) have been taken from him, allegedly for public use, without just and adequate compensation therefor, there being no authority of law for so doing.

The State of Georgia, by and through the Legislative Branch, and/or The Judiciary (The Supreme Court of Georgia) through its entity thus created has abridged his privileges and immunities as a citizen of the United States, deprived him of his property without due process of law; and denied him the equal protection of the laws, there being no law to authorize any of the actions of said Supreme Court and/or its creation of a legal entity, or the said rules adopted for said creature thus illegally created. Lawyers just as other citizens enjoy first class citizenship. *Slowchower v. Bd. of Education*, 350 U.S. 551; *Garrity v. New Jersey*, 385 U.S. 493.

The incorporation or integration of the Georgia Bar was based upon a law by the General Assembly. In response to a request by the Georgia Bar Association it issued an order to said Association to prepare a charter for execution; it later verbally ordered portions of the proposed rules stricken, including the term pursuant to "inherent power." The final order stated it did so "pur-

suant to the Act of the General Assembly." Under the Georgia Constitution this was not an adjudication but an action called upon by the General Assembly. The Court now in this decision states that it did so under its "judicial power." Thus, at this late date (*Wallace v. Wallace*, 225 Ga. 102; and again in this case), the Georgia Supreme Court is holding that the power to integrate or incorporate the Bar is an incident to the exercise of its judicial power. As such, nunc pro tunc, "the action had the characteristics of legislation." *Lathrop v. Donohue*, 367 U.S. 820, at page 827. Under the authority of this case, this Court should grant the writ of certiorari.

But unlike Wisconsin, the Georgia Supreme Court *does not have* a "general superintending power over all inferior courts," and under its extremely limited power as an appellate court it was without authority to legislate into existence the entity—State Bar.

CONCLUSION

The petition for writ of certiorari should be granted, and the judgment of the Supreme Court of Georgia should be reversed for failing to protect a citizen of the United States, in denying him due process of law, depriving him of his freedom of speech, and of the press and the right of association, and the equal protection of the laws. The judgment should be reversed and remanded to the lower court granting him the following relief:

1. The order of the Supreme Court of Georgia creating the entity—State Bar—should be declared null and void and without and beyond the authority of the Constitution of Georgia and of the United States.

2. The rules adopted for the operation, organization, and control of the entity—State Bar—created by the Supreme Court of Georgia by its legislation, should be declared to be null, void and beyond the constitutional authority of the State and Federal Constitutions.

3. Georgia Laws 1963, pp. 70-72, be declared unconstitutional, null and void, for one or some, or all of the reasons declared on in petitioner's complaint in the lower court.

4. The Supreme Court of Georgia should be directed to declare Georgia Laws 1963, pp. 70-72, unconstitutional, null and void; and likewise all proceedings by it thereunder.

5. The Supreme Court of Georgia should be declared to be without "judicial" or "inherent power" to have legislated as it sought to do in this instance.

6. The temporary injunction granted in the lower court should be affirmed; and the judgment and opinion in this case in the Supreme Court of Georgia should be reversed and remanded; and

7. That court ordered to grant this petitioner such other and further relief as this court deem meet and proper.

Respectfully submitted,

G. SEALS AIKEN,
1409-10 Candler Bldg.,
Atlanta, Georgia,

GEORGE G. FINCH,
5051 Northside Drive, N.W.,
Atlanta, Georgia,

Attorneys for the Petitioner.

Appendix

Decided: Sep. 15, 1969

[fol. 1] Supreme Court of Georgia

25292. SAMS et al v. OLAH.

The attacks made on the validity of the Act proposing the creation of the State Bar of Georgia (Ga. L. 1963, pp. 70-72), and the rules and regulations adopted for the government of the State Bar (219 Ga. 878-917), were without merit, and the trial judge erred in declaring them unconstitutional and void, and in restraining and enjoining the disciplinary action against the appellee.

(a) The complaint stated a claim on which relief could be granted in alleging illegal expenditures of the funds obtained from license fees, and the judge properly held that the complaint was not subject to the motion to dismiss.

[fol. 2] MOBLEY, Presiding Justice. This appeal is from an order denying a motion to dismiss an equitable complaint; declaring Ga. L. 1963, pp. 70-72, to be unconstitutional, null, and void; and granting an injunction.

Stephen J. Olah, an attorney licensed to practice law in Georgia, brought an action against Disciplinary officials of the State Bar of Georgia and against the State Bar of Georgia. He alleged that they are proceeding against him without authority of law in a disciplinary matter because the law under which the State Bar of Georgia was created (Ga. L. 1963, pp. 70-72), and the rules of the

State Bar (219 Ga. pp. 878-917), violate the Constitution of Georgia and the Constitution of the United States, for stated reasons, and are contrary to certain laws of the State. He sought injunction against the prosecution of the disciplinary action against him and against other alleged illegal actions of the State Bar.

The order of the trial judge, entered after a hearing on the issues involved in the pleadings, held that (1) the complaint stated a claim for equitable relief because of the unconstitutionality of the statute, and be-
[fol. 3] cause of the alleged illegal expenditure of funds by the State Bar to foster legislation and promote ideologies, political issues, and candidates which the complainant opposes. (2) Ga. L. 1963, pp. 70-72, is unconstitutional, null, and void on a number of grounds alleged in the complaint, examples of which are stated. (3) The defendants are restrained and enjoined from proceeding with the disciplinary action against the complainant under rules and regulations adopted pursuant to the 1963 Act.

1. The complaint made numerous constitutional attacks on the Act proposing the creation of the State Bar of Georgia. (Ga. L. 1963, pp. 70-72). The trial judge's order holds that the Act is unconstitutional, null, and void "for a considerable number of grounds alleged" and only specifies a few of the grounds on which the Act is held unconstitutional. It is therefore necessary that we consider all constitutional attacks to determine if any of them are meritorious.

A number of the grounds of attack were dealt with by this court in *Wallace v. Wallace*, 225 Ga. 102
[fol. 4] (166 SE 2d 718), adversely to the contentions of the complainant (appellee) herein. These

attacks are as follows: (1) The State Bar Act violates Art. I, Sec. I, Par. XXIII of the Constitution of Georgia (*Code Ann.* § 2-123), in that it delegates legislative power to the Supreme Court of Georgia and to the Georgia Bar Association. (2) The State Bar Act delegates to the Supreme Court of Georgia the right to create the State Bar of Georgia contrary to Art. VI, Sec. II, Par. IV of the Constitution of Georgia (*Code Ann.* § 2-3704), which provides that: "The Supreme Court shall have no original jurisdiction but shall be a court alone for the trial and correction of errors of law . . ." (3) The State Bar Act is a special law respecting the Supreme Court for which provision has already been made by general law, *Code* § 24-3901, enumerating the powers of the Supreme Court, and this violates the Constitution of Georgia, Art. I, Sec. IV, Par. I (*Code Ann.* § 2-401), prohibiting the passage of a special law in any case for which provision has been made by existing general law. (4) The State Bar Act deprives the appellee and other lawyers of their right to have their rights, duties, and obligations as lawyers defined by an act of the General Assembly of
[fol. 5] Georgia, and not otherwise, contrary to Art. III, Sec. I, Par. I (*Code Ann.* § 2-1301) and Art. III, Sec. VII, Par. XX (*Code Ann.* § 2-1920) of the Constitution of Georgia. (5) The State Bar Act is unconstitutional because it creates a private corporation in violation of Art. III, Sec. VII, Par. XVII (*Code Ann.* § 2-1917) of the Georgia Constitution, which provides that the General Assembly shall have no power to grant corporate powers to private companies.

Two Justices dissented from the *Wallace* case on grounds other than the constitutional grounds, which would not be reached under their theory of the case, and one Justice did not participate because of illness. The appel-

lee has argued these grounds of constitutional attack decided in the *Wallace* case, and asks that we overrule the *Wallace* case. After careful consideration of the *Wallace* case, we adhere to the rulings made therein.

2. It was asserted by the appellee that the State Bar Act violates the Constitution of Georgia, Art. III, Sec. VII, Par. XVI (*Code Ann.* § 2-1916), which provides that no law or section of the Code shall be amended or repealed by mere reference to its title, or to the number [fol. 6] of the section of the Code, but the amending or repealing act shall distinctly describe the law to be amended or repealed, and the alteration to be made, in that the State Bar Act purports to repeal all laws and parts of laws in conflict with it, but does not describe the law or laws to be repealed, or the alterations to be made.

The Act proposing the creation of the State Bar does not purport to amend any law or section of the Code. If the Act should have the effect of repealing any law or Code Section by implication, it is a well settled principle that repeals by implication do not come within the provisions of Art. III, Sec. VII, Par. XVII of the Constitution. *Fortson v. Fortson*, 200 Ga. 116, 119 (35 SE 2d 896); *Leonard v. State*, 204 Ga. 465 (1) (50 SE 2d 212).

3. The trial court held that the State Bar Act violated the Constitution, Art. III, Sec. VII, Par. VIII (*Code Ann.* § 2-1908) in that it contained matter in the body of the Act different from that expressed in the title, in [fol. 7] allowing the administrative arm of the court (the State Bar) "to control its own rules and prevent the Supreme Court from creating rules not presented it (1) by the Georgia Bar Association; and (2) thereafter, the State Bar . . ."

The title of the Act gives notice that the Act is "to authorize the Supreme Court of Georgia to establish, as an administrative arm of the Court, a unified, self-governing bar . . ." and "to provide for the adoption of rules and regulations by the Supreme Court for the organization and government of the unified bar . . ." Further, it gives notice that the Act is "to provide the method of making application to the Supreme Court for the establishment of the 'State Bar of Georgia' and the method of establishing and amending rules and regulations governing the same; . . ."

The title of the Act stating that it provides a method of making application to the Supreme Court for establishment of the State Bar gives notice that application for creation of the State Bar may be made by some group, and that the Act will set out the conditions of the application. The statement in the caption that the [fol. 8] Act will provide "the method of establishing and amending rules and regulations governing the same," would be notice that the Act could contain the provision (in § 5) that the "rules and regulations may be amended only upon recommendations of the 'State Bar of Georgia' under such rules and proceedings as shall be prescribed by the Court."

The Act is not subject to the attack that it violates the constitutional prohibition against an act containing matter different from that expressed in the title. See *Sheppard v. DeKalb County Board of Education*, 220 Ga. 219, 220 (1) (138 SE 2d 271); *Nash v. National Preferred Life Ins. Co.*, 222 Ga. 14 (1) (148 SE 2d 402).

4. While the appellee argues strongly that the Act proposing the creation of the State Bar was an improper delegation of a legislative function to the Supreme Court,

he further contends that the Act improperly restricts the power given the court by providing that it might create a unified bar only on petition by the Georgia Bar Association, could initially adopt only those rules and regulations for the government of the unified bar which had [fol. 9] been approved by the Georgia Bar Association, and upon the establishment of the State Bar could amend the rules and regulations only upon recommendations of the State Bar.

In *Wallace v. Wallace*, 225 Ga. 102, supra, it was held that the creation of a unified state bar is a judicial function. In proposing that the Supreme Court create a unified bar, the General Assembly did not have the authority to circumscribe the court by denying it the right to adopt rules and regulations on its own initiative. Since the court had the power to create the State Bar, it must necessarily also have the power to make rules for the government of this administrative arm of the court.

In *Georgia Bar Assn. v. Lawyers Title Ins. Corp.*, 222 Ga. 657, 659 (151 SE 2d 718), this court stated that it concurred in the view expressed in cases from other jurisdictions that the judiciary could not be circumscribed or restricted in the performance of its duties related to its inherent power to regulate the practice of law. It is the duty of this court to reject legislative attempts to interfere with the exercise of its judicial powers. [fol. 10] The provisions in the State Bar Act attempting to limit this court in the exercise of its judicial function in creating the State Bar, and adopting and amending rules and regulations for its government, are void.

Where some portion of a legislative act is unconstitutional and void, the whole legislative scheme is not rejected if the improper matter is not such an essential and

inseparable part of the general legislative purpose that the entire Act must fall with it. *Leonard v. American Life & Annuity Co.*, 139 Ga. 274 (77 SE 41). These void provisions in the State Bar Act, attempting to limit this court in the exercise of its judicial functions, are not such an essential and inseparable part of the general legislative purpose as to render the whole Act unconstitutional.

5. The trial court held that the provision of the Act authorizing the assessment of a "reasonable license fee" against members of the State Bar is unconstitutional because it is either a tax or a gratuity, and violates the Constitution of Georgia, Art. VII, Sec. I, Pars. [fol. 11] I and II (*Code Ann.* §§ 2-5401 and 2-5402); and Art. VII, Sec. II, Pars. I and III (*Code Ann.* §§ 2-5501 and 2-5503).

The Constitution, Art. VII, Sec. II, Par. III (*Code Ann.* § 2-5503) requires that: "All money collected from taxes, fees and assessments for State purposes, as authorized by revenue measures enacted by the General Assembly, shall be paid into the General Fund of the State Treasury . . ." Clearly the purport of the State Bar Act is to authorize the establishment of a regulatory body to regulate the practice of law, and the fee is plainly authorized for the purpose of defraying the expenses of operating the State Bar. It is not a fee authorized by a revenue measure, nor is it a gratuity.

This court in *Brown v. City of Atlanta*, 221 Ga. 121, 124 (143 SE 2d 388), held: "The license fee required under the rules and regulations of the State Bar of Georgia is not a professional tax on attorneys levied by the State of Georgia in lieu of the professional tax levied by the Act of 1935 (Ga. L. 1935, p. 13). This license fee is paid to

the State Bar of Georgia, and the funds received
[fol. 12] are dispersed under the direction of the Board of Governors of the State Bar of Georgia. No part of these funds is ever paid into the treasury of the State of Georgia. A municipality is not precluded from levying a tax on attorneys because of the license fee paid to the State Bar of Georgia."

The trial court erred in holding that the fee is a tax or gratuity, and unconstitutional because violating the constitutional provisions recited.

6. The appellee contended in his complaint that the State Bar Act violates the impartial protection and due process clauses of the Georgia Constitution (Art. I, Sec. I, Pars. II and III; *Code Ann.* §§ 2-102 and 2-103), and the clause providing that it is the duty of the Legislature to enact laws to protect citizens in the full enjoyment of their rights, privileges and immunities (Art. I, Sec. I, Par. XXV; *Code Ann.* § 2-125), because the Act defines the rights, duties, and obligations of lawyers, including the payment of a license fee, without specific enactment thereof by the General Assembly. It is further
[fol. 13] asserted that the Act violates the Georgia Constitution, Art. I, Sec. I, Par. IV (*Code Ann.* § 2-104), providing that no person shall be deprived of his right to defend his cause in any of the courts of this State, and Art. I, Sec. I, Par. V (*Code Ann.* § 2-105), guaranteeing rights in regard to trial, because lawyers are denied their right to have an accusation based on an affirmative statute of the State.

These attacks present essentially the same questions as those ruled on in *Wallace v. Wallace*, 225 Ga. 102, 112, supra, wherein it was held: "This holding also controls adversely to appellant as to his attacks asserting

that the Act deprives him and others of full enjoyment of their rights, privileges and immunities as lawyers and deprives him of the right to have his rights, duties and obligations defined by the General Assembly. As discussed above, regulation of the practice of law is the function of the judiciary."

Accordingly, these constitutional attacks are without merit.

[fol. 14] 7. It was asserted by the appellee that the State Bar Act violates the First, Fifth, and Fourteenth Amendments of the United States Constitution (*Code* §§ 1-801, 1-805 and 1-814), and the due process and freedom of speech clauses of the Georgia Constitution (Art. I, Sec. I, Pars. III and XV; *Code Ann.* §§ 2-103 and 2-115), because it requires him to pay a fee against his will when he is already fully authorized under the law to practice his profession; because it deprives him of freedom of contract, conscience, speech, and liberty, and deprives him of property without due process of law; because the Act and the rules of the State Bar were entered into without his control or consent and he will be deprived of his right to earn a living unless he obeys the rules and pays the dues required and remains a member of the organization; and because the State Bar takes his fee and spends it for the purposes it sees fit to promote ideologies, engage in political activities, and seek the passage of legislation, against his wishes, requiring his unwilling membership in a political organization.

[fol. 15] The lawyer stands in a unique position in our society. He is by virtue of the practice of his profession an officer of the court. *Platen v. Byck*, 50 Ga. 245, 248; *Bibb County v. Hancock*, 211 Ga. 429, 438 (86 SE 2d 511). In *Gordon v. Clinkscales*, 215

Ga. 843, 845, 846 (114 SE 2d 15), this court quoted with approval from 7 CJS 708, Attorney and Client, § 4 b, as follows: "The right to practice law is not a natural or constitutional right, nor an absolute right or a right de jure, but is a privilege or franchise." It also quoted with approval from 7 CJS 706, Attorney and Client, § 4 a, as follows: "An attorney does not hold an office or public trust, in the constitutional or statutory sense of that term, but is an officer of the court. He is, however, in a sense an officer of the state, with an obligation to the courts and to the public no less significant than his obligation to his clients. The office of attorney is indispensable to the administration of justice and is intimate and peculiar in its relation to, and vital to the well-being of, the court."

Because of the vital role of the legal profession in the administration of justice, it was a proper exer-
[fol. 16] cise of State power, proposed by the legislative department, and activated by the judiciary, to create a State Bar for the purpose of "maintaining high standards of conduct in the legal profession and . . . aiding in the efficient administration of justice." Ga. L. 1963, pp. 70, 71, § 2. It has never been the law of this State that a lawyer holds an irrevocable license to practice law. There is no merit in the appellee's contention that he is denied his constitutional rights by the State Bar Act because it requires him to pay a fee when he is fully authorized to practice his profession, or because he will be deprived of his right to earn a living unless he obeys the rules and remains a member of the State Bar.

The State Bar Act does not deprive the appellee of his freedom of contract, conscience, speech, and liberty, nor deprive him of his property without due process of law. It is true that he is required to contribute to the

cost of the operation of the State Bar, and he may not agree with all of the policies as determined by its Board of Governors. The Board of Governors is selected in a democratic manner. It is frequently true in a [fol. 17] democratic society that the wishes of the minority are overruled, even though they must contribute to the cost of the programs carried forward by the majority. The individual lawyer in Georgia is left entirely free in his contracts with his clients, and he has complete freedom of conscience in the causes which he espouses. The only area in which he may be restrained by the State Bar is in his professional conduct, and this is a legitimate exercise of restraint over the freedom of the individual.

The State Bar Act does not authorize the organization to engage in political activities. Section 2 of the Act authorizes the Supreme Court to adopt rules and regulations and to "define the rights, duties and obligations of the members therein including the payment of a reasonable license fee and otherwise regulate and govern the practice of law in this State, to the end that such unified State Bar shall promote the best interest of the public by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice." The Act does not authorize the li- [fol. 18] cense fees to be used for any activity except those in harmony with the stated purposes of the Act.

The State Bar Act, and the rules and regulations adopted to govern the State Bar, are not subject to the constitutional attacks stated in this division.

8. The appellee contended that the State Bar Act, and the rules and regulations of the State Bar, are contrary

to the Act which is sometimes called the "Right to Work" Act. Ga. L. 1947, pp. 616-621 (*Code Ann.* §§ 54-801—54-909). This latter Act deals with relationships between "employers," "employees," and "labor organizations." The State Bar of Georgia is not a labor organization, the lawyer is not an employee, nor is the client an employer, within the meaning of the Act. "The engagement of counsel does not create the relation of master and servant . . . The employment carries with it duties and obligations apart from serving the client. He represents the client . . . The attorney not only serves his client, but the court also, and through the court he serves in a measure the public." *Claxton v. Johnson County*, [fol. 19] 194 Ga. 43, 48, 49 (20 SE 2d 606).

The purposes of the State Bar are: "(a) To foster among the members of the Bar of this State the principles of duty and service to the public; (b) To improve the administration of justice; and (c) To advance the science of law." Rule 1-103, 219 Ga. 879.

There is no merit in the contention that the State Bar Act violates the "Right to Work" law.

9. The appellee alleged that the State Bar Act does not authorize disciplinary proceedings, and that rules 4-101 through 4-218 (219 Ga. 878, 901-914) were adopted by this court without authority of law. The Act provides in § 2 for the adoption of rules and regulations "for the organization and government of the unified State Bar and to define the rights, duties and obligations of the members therein . . . and otherwise regulate and govern the practice of law in this State, to the end that such unified State Bar shall promote the best interest of the public by maintaining high standards of conduct in the legal profession and by aiding in the efficient administration of justice."

Section 3 provides that "before a final order of
[fol. 20] any nature or any judgment of disbarment is entered, the lawyer involved may elect to have any material issues of fact determined by a jury in the superior court of the county of his residence."

There is no merit in the contention that the Act does not authorize the adoption of disciplinary rules and regulations.

10. The purpose of the State Bar Act was to initiate the creation of the State Bar of Georgia. It eliminated any conflicting claims of coordinate branches of government to such power. Its adoption encouraged the court to exercise its inherent power in this regard. In response thereto, but in the exercise of an inherent judicial function, the Supreme Court acted and the State Bar of Georgia was created. Although the Act was not essential for such action, it is a valid legislative enactment and not subject to the constitutional and other attacks made. The trial judge erred in holding the Act void, and the rules and regulations a nullity, and in restraining and enjoining the defendants from proceeding with the disciplinary action against the appellee.

11. We now consider the ruling by the trial judge that the complaint stated a claim for equitable relief, which will require a trial of the issues, because of
[fol. 21] the "alleged illegal expenditure of funds collected from him and others similarly situated."

The appellee alleged that the State Bar is spending the dues collected from him and other lawyers "in illegal manners and against the wishes" of the appellee and others similarly situated, in specified ways. These allegations do not involve any question of the validity of the State Bar

Act, but make the separate issue of an alleged illegal expenditure of funds by the State Bar.

The lawyer is required to pay an annual license fee to the State Bar in order to practice his profession. Should the State Bar spend the funds derived from license fees on activities not in harmony with the purposes of the State Bar, this would deprive the lawyer of his property without due process of law.

Some of the allegations of illegal expenditures are obviously without merit. For example, the appellee complained that the State Bar illegally used its funds by "hiring and paying a lawyer to draw charges against this [fol. 22] petitioner with funds collected from this petitioner, which is against his desires and wishes." The test is not whether the funds are being spent contrary to the wishes of the lawyer, but whether the expenditures are for purposes for which the State Bar was created. The maintenance of high standards of professional conduct by members of the bar is one of the most important functions of the State Bar, and the dues of its members can certainly be legally used for this purpose, whether or not it is the wish of an individual member that his professional conduct be investigated. In *International Assn. of Machinists v. Street*, 217 Ga. 351 (122 SE 2d 220), this court held that a labor union might be enjoined from using its funds for political purposes against the wish of an individual member, but this ruling was based on the fact that this was a use of funds for purposes other than collective bargaining, the legitimate purpose of the union, and not merely that it was against the wish of the member.

The trial judge based his ruling that the complaint stated a claim as to alleged illegal expenditures on the alleged use of funds "to foster legislation and promote

[fol. 23] ideologies and political issues and candidates he opposes in violation of named clauses and sections of the State and Federal Constitutions. The promotion of political issues and candidates is not within the purpose of the State Bar as expressed in the Act and the rules and regulations. The fostering of legislation and the promotion of ideologies may, or may not, be consonant with the purposes of the State Bar, according to the nature of the legislation and the ideologies.

The State Bar of Georgia is a legal entity, which may sue or be sued. Rule 1-102, 219 Ga. 878. A court of equity has jurisdiction to grant an injunction to a member of the State Bar denied a constitutional right by it. *Clary v. Mathews*, 224 Ga. 82 (160 SE 2d 338). A motion to dismiss for failure to state a claim "should not be granted unless it appears to a certainty that the plaintiff would be entitled to no relief under any state of facts which could be proved in support of his claim." *Bourn v. Herring*, 225 Ga. 67 (3) (166 SE 2d 89).

We affirm the ruling of the trial judge that the com-
plaint stated a claim on which relief could be
[fol. 24] granted, because of the alleged illegal expendi-
ture of funds, and the appellee is entitled to support this contention with evidence.

Judgment affirmed in part; and reversed in part. All the Justices concur. Felton, J., concurs specially.

[fol. 1] FELTON, Justice, concurring specially.

1. It has been impossible for me to give as full consideration to this case as I do in ordinary circumstances. I have done the best I could under the existing situation. I first concurred in the opinion and judgment. On motion for rehearing in the limited time that I have, I wish to change my concurrence to a special one because at this moment I cannot agree with all that is said in the opinion and think that possibly more should have been said on some of the questions ruled on.

I belatedly discovered that the trial judge in his judgment stated: "Whether or not he may be disciplined, suspended, or disbarred . . . by some rule authorized by the Supreme Court under its inherent power as stated in Wallace v. Wallace, 224 Ga.255 (161 SE 2d 288)
[fol. 2] . . . is not here decided or passed on." It is contended by appellee that this court has no jurisdiction to pass on a question not ruled on by the trial court. I also think that the contention is without merit for the reason that the trial court could not escape the fact that he was bound by the decision in the *Wallace* case by refusing to pass on the question of this court's inherent power, and for the reason that the legal consequence of the trial court's judgment is that this court does *not* have the prerequisite inherent power, because if this is not true he could not issue a legal and binding injunction, which necessarily meant that this court does not have that power. In this case, this court does have jurisdiction to do what it has done under the peculiar circumstances existing.

2. Even if this court stated that it was acting under legislative authority claimed to be unconstitutional, where two decisions of this court hold that this court has inherent

[fol. 3] power to do the acts complained of, the authority of this court to so act renders moot the constitutionality of the legislative action purportedly acted on. This court has never said that it did not act on the basis of inherent power and if it could, and did, what it did is binding. Inherent power is the life of this issue and nothing that has happened has snuffed out that life and, indeed, nothing can except a new constitution. That also disposes of the provision in the act or rules which provides that no change in the rules, or addition of new ones could be effected unless the State Bar instituted the action. This court had the inherent power to make such a rule, no matter how unwise some might think it to be. The court, in this field of operation, could experiment with such a rule. It *could* work, but even if experience shows it to be wrong or unwise, the court can always change a rule if it is shown to be unwise or likely to do some harm to any person. My point is that it is not unconstitutional.

Georgia Supreme Court Judgment

[fol. 1] SUPREME COURT OF GEORGIA

Atlanta, September 15, 1969

The Honorable Supreme Court met pursuant to adjournment. The following judgment was rendered:

Garvis L. Sams et al v. Stephen J. Olah.

This case came before this court upon an appeal from the Superior Court of Cobb County; and, after argument had, it is considered and adjudged that the judgment of the court below be affirmed in part, and reversed in part for the reasons stated in the opinion this day filed. All the justices concurs. Felton, J., concurs specially.

BILL OF COSTS, $30.00

IN THE SUPERIOR COURT FOR THE COUNTY OF COBB

STATE OF GEORGIA

[fol. 1]

STEPHEN J. OLAH,
Plaintiff

v.

GARVIS L. SAMS, et al,
Defendants

CIVIL ACTION No. 26475

ORDER

(Filed April 8, 1969)

The above and foregoing matter coming on to be heard before me after a hearing on the law, and counsel for both parties having been heard, the Court finds and holds as follows:

1. The motion to dismiss is hereby denied. The Petition, as amended, states a claim for equitable relief because of the unconstitutionality of a statute, as well as to seek a declaration of plaintiff's rights, and to restrain and enjoin the alleged illegal expenditure of funds collected from him and others similar situated in order to foster legislation and promote ideologies and political issues and candidates he opposes in violation of named clauses and sections of the State and Federal Constitutions as set out in the petition, as amended. See Looper v. Ga. So. &c. Railway Co., 213 Ga. 279; International &c. of Machinists v. Street, 215 Ga. 27; 217 Ga. 351; and 367 U.S. 740. Questions of fact are involved requiring a trial of the issues, and a simple law question will not settle them.

2. Without a doubt, Georgia Laws 1963, pp. 70, 72, is unconstitutional, null and void for a considerable number of grounds alleged in the amended petition, and is hereby declared to be a nullity. For example it:

(a) Clearly contains matter in the body of the act different from what is expressed in the title (Sections 4 and 5 thereof), amounting to covert, surprise, and clandestine legislation in seeking to tie the hands of the Supreme Court and all future members thereof in allowing the administrative arm of the court thus created to control
[fol. 2] its own rules and prevent the Supreme Court from creating rules not presented it (1) by the Georgia Bar Association; and (2) thereafter, the State Bar in violation of Art. 3, Sec. 7., Par. 8, Constitution of 1945 (Code Ann.S. 2-1908).

See: Prothro v. Orr, 12 Ga. 36, 42;
Crabb v. State, 88 Ga. 584;
Harris v. State, 110 Ga. 887;
Conley v. State, 85 Ga. 365;
McDuffie v. State, 87 Ga. 687;
Elliott v. State, 91 Ga. 687;
Dempsey v. State, 94 Ga. 766, 768;
Sasser v. State, 99 Ga. 54
Arrington v. State, 148 Ga. 115
Bray v. City of East Point, 203 Ga. 315, 317;
Griffin v. Merritt, et al, 223 Ga. 562, 658 (1)

(b) Seeks to 'aid' the Supreme Court by authorizing it to exercise legislative power over lawyers and the law practice and to a private organization created by a branch of the Georgia Judiciary in violation of the separation of powers doctrine (Art. 1, Sec. 1, Par. 23, Constitution; Code Ann. S. 2-123;) delegates its legislative power (Art. 3, Sec. 1, Par. 1, Code Ann.S. 2-1201; and Art. 3, Sec.

7, Par. 30, Code Anno. S. 2-1920); and likewise seemingly authorizes and directs the Supreme Court, by and through its administrative arm thus created, the right of taxation solely within the legislative authority in derogation of the Constitution. (Art. 7, Sec. 1, Par. 1; Code Ann. S. 2-5401 and 2-5402; Art. 7, Sec. 2, Par. 1; Code Ann. S. 2-5501; and Art. 7, Sec. 2, Par. 3; Code Ann. S. 2-5503). The Legislature cannot delegate Judicial Power. If this be judicial power delegated then it is automatically void as an attempt to delegate same to a separate branch of government, and if it be legislative power it is void for the reasons stated above. If it is not a tax it is a gratuity, and whether "money collected from taxes, fees and assessments for State purposes" it must be paid into the General Fund and appropriated therefrom "as required by this Constitution." Thus it matters not whether it is called a tax, a fee, or assessment, it is beyond the pale of the Constitution of 1945. Lawyers, just as farmers, and others, must remain within the law and the Constitution. See Williams v. Ivey, 177 Ga. 77; Agricultural Commodities Authority v. Balkcom, 215 Ga. 107; Campbell v. Farmer, 223 Ga. 605.

[fol. 3] 3. The defendants are therefore enjoined and restrained from proceeding to harass, suspend, disbar or discipline plaintiff under any rule or regulation adopted pursuant to Georgia Laws 1963, pp. 70, 72, which is an absolute nullity. Any and all rules adopted pursuant thereto are likewise a nullity. Whether or not he may be disciplined, suspended or disbarred by reason of an offense charged under Georgia Code Ch. 9-5; or an offense occurring in open court of the Superior Court under its inherent power, or by some rule authorized by the Supreme Court under its inherent power as stated in

Wallace v. Wallace, No. 24480, 224 Ga. p. 255, (an opinion rendered by a majority of 4 Justices, 2 Dissenting, Chief Justice absent; Motion for rehearing denied, 4-3) is not here decided or passed on.

This 8th day of April, 1969.

/s/ L. C. Hames, Jr.
L. C. HAMES, JR., JUDGE,
COBB SUPERIOR COURT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 940

STEPHEN J. OLAH,
Petitioner,

vs.

GARVIS L. SAMS, ALBERT SIDNEY PARKER, FRANK D. HOLCOMB, INDIVIDUALLY AND AS MEMBERS OF THE GRIEVANCE TRIBUNAL OF THE STATE DISCIPLINARY BOARD OF THE STATE BAR OF GEORGIA, IN DOCKET No. 37; CLINTON J. MORGAN, THE DISTRICT REPRESENTATIVE OF THE STATE DISCIPLINARY BOARD, ASA W. CANDLER, CHAIRMAN OF SAID BOARD, AND THE STATE BAR OF GEORGIA,
Respondents.

BRIEF OF RESONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

DONALD D. SMITH
MALLORY C. ATKINSON
ALEXANDER COCALIS
CHARLES L. GOWEN
Trust Company of Georgia Bldg.
Atlanta, Georgia 30303
Attorneys for Respondents

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, HArrison 1-3030

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 940

STEPHEN J. OLAH,
Petitioner,

vs.

GARVIS L. SAMS, et al.,
Respondents.

BRIEF OF RESONDENTS IN OPPOSITION TO QUESTIONS PRESENTED

QUESTION PRESENTED

Petitioner recites nine questions presented for review and we suggest that even protecting each and every contention of petitioner these questions might be more simply and with less repetition stated as follows:

Does (1) the "State Bar of Georgia Act" (Georgia Laws 1963, pages 70-72) or (2) the Order of the Supreme Court of Georgia [219 Georgia 873 et seq. (1963)], creating the integrated bar as an administrative arm of the court and subsequent amendments thereto, or (3) the

rules and regulations for organization and government of the State Bar of Georgia as approved by the Supreme Court of Georgia in requiring payment of an annual fee, and providing for preliminary disciplinary proceedings by the State Disciplinary Board of the State Bar of Georgia directed toward recommendations as to sanction and report to the courts violate any right of petitioner under the terms of the First, Fifth or Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

Respondents incorporate by reference and adopt the statement of the case by the Georgia Supreme Court in the opinion review of which is sought, as set out in the appendix of the Petition for Writ of Certiorari beginning on page 15 of that Petition. Actually the statement by petitioner is substantially correct except that there are three aspects of the case not clearly reflected in that statement.

(1) The State Bar of Georgia is not an autonomous body which may enact and enforce its own rules, but on the contrary is an administrative arm of the court and has only such power and authority as is vested in it by the Supreme Court of Georgia.

(2) The State Bar of Georgia, its State Disciplinary Board and any one or more of its grievance tribunals under the rules approved by the Supreme Court are each and all together without the ultimate authority to pronounce disciplinary sanctions but are authorized to conduct investigations, hearings and conclude by making recommendation and report to the courts.

(3) The record in this case is absolutely silent as to there being prior to the filing of this petition any ob-

jection by petitioner to any expenditure by the State Bar, or payment by petitioner of membership fee under any protest, or any suggestion by petitioner of the impropriety of any such expenditure previously, presently or anticipated. Noting that petitioner's complaint contained allegations of unauthorized activity and of illegal expenditures of petitioner's dues, the Supreme Court of Georgia held that the question of whether there had been such activity and expenditure of funds was a question of fact which petitioner is entitled to support, if he can, with evidence. Accordingly, the trial court's denial of respondent's motion to dismiss was affirmed with regard to such allegations and the case ordered remanded to the trial court.

SUMMARY OF REASONS FOR DENIAL OF WRIT

1. The gravity and importance of the questions raised is conceded, but these questions have been adjudicated by the court of last resort of Georgia, by the courts of last resort of many other states and by the Supreme Court of the United States. We find no conflict or confusion in the cases.

2. The right of an attorney to due process of law is firmly established and the rules under consideration and the decisions of the Supreme Court of Georgia manifest due and complete adherence to this principle.

3. Petitioner insists that the Supreme Court of Georgia under its state constitutional authority limiting its jurisdiction has exceeded those limits. This argument confuses power and jurisdiction. While the jurisdiction of the court is fixed by one constitutional provision, judicial power is granted in another and different section of the state constitution which confers upon the court authority over and behind the jurisdictional restrictions.

4. Petitioner has utterly failed to show wherein the "State Bar of Georgia Act" passed by the General Assembly of Georgia, or the Rules of the Supreme Court of Georgia (whether "pursuant to that Act" or within its constitutionally granted or inherent power) providing for the creation, organization and government of the State Bar of Georgia, or these rules of such integrated bar approved by that court either in content or in application result in any infringement upon petitioner's rights under either the First, Fifth or Fourteenth Amendments to the United States Constitution.

ARGUMENT

The questions presented for review here in the last analysis sift down to one question and that is the question of the legitimacy of the unified or integrated bar. This question has been before the Supreme Court of Georgia in four cases since the State Bar of Georgia came into being in 1964, and that legitimacy has been consistently sustained. In the first of these cases the Court manifested its concern for and stated its insistence upon strict adherence to all requirements of due process in connection with disciplinary proceedings. *Clary* v. *Mathews,* 224 Ga. 82, 160 S.E.2d 338 (1968). The second and third cases involved due process and also the overall constitutionality of the creation, organization and rules of the integrated bar and in both of these cases certiorari was denied by the United States Supreme Court. *Wallace* v. *Wallace,* 225 Ga. 102, 166 S.E.2d 718 (1969), *cert. denied* 38 U.S.L. Week 3192 (U.S. Nov. 24, 1969) (No. 117, October Term 1969). *Wilson* v. *State Bar of Georgia,* 225 Ga. 343, 168 S.E.2d 584 (1969), *cert. denied* 38 U.S.L. Week 3210 (U.S. December 8, 1969) (No. 568, October Term 1969). The fourth one of these cases is the instant case, review of which is sought by this petition.

Unified or integrated bars are now existent in thirty states, Puerto Rico and the Virgin Islands. The earliest of these was formed in 1921 in North Dakota and the most recent in New Hampshire in 1968. In no jurisdiction where formed has an integrated bar been repudiated by choice, by legislation or by judicial decision. The same questions raised in the instant case were raised in this Court in 1961 and in that case the legitimacy and the constitutionality of the State Bar of Wisconsin was sustained. *Lathrop* v. *Donohue,* 367 U.S. 820 (1961). In 1963, when the Supreme Court of Georgia had before it the motion of the Georgia Bar Association for the integration of the State Bar of Georgia, the brief in support of that motion relied not only upon decisions of the courts of other states but also upon *Lathrop* v. *Donohue, supra.*

This Court has recognized that a state has the power to prescribe the conditions of admission to the bar [*Konigsberg* v. *State Bar,* 366 U.S. 36 (1961) and *In re Anastaple,* 366 U.S. 82 (1961)] and over the conduct of lawyers after admission [*Cohen* v. *Hurley,* 366 U.S. 117, 123-124 (1961), reversed on other grounds by *Spevack* v. *Klein,* 385 U.S. 511 (1967)]. It would seem that the power of a state to regulate the practice of law is even greater than its power to prescribe membership in a union by an employee [*Railway Employees' Department* v. *Hanson,* 351 U.S. 225 (1956)] since it involves the administration of justice—"the highest duty of government".

Not only has the Supreme Court of Georgia been mindful of the imperative that the State Bar of Georgia is not to impair or abrogate any constitutional rights of any member, but it has since 1964 taken occasion to twice remind the State Bar of Georgia of such necessity. *Clary* v. *Mathews,* 224 Ga. 82, 160 S.E.2d (1968). *Wilson* v.

State Bar of Georgia, 225 Ga. 343, 168 S.E.2d 584 (1969), *cert. denied* 38 U.S.L. Week 3210 (U.S. December 8, 1969) (No. 568, October Term 1969).

Petitioner suggests and contends that the instant case from Georgia is not comparable to the Wisconsin case of *Lathrop* v. *Donohue, supra,* in that the jurisdiction of the Supreme Court of Georgia is by the Georgia Constitution more restricted or limited. Without regard to jurisdictional limitations on either court, the answer lies in the vesting of judicial power sections of the two state constitutions.

> "The judicial powers of this State shall be vested in a Supreme Court, a Court of Appeals, Superior Courts, Courts of Ordinary, Justices of the Peace, Notaries Public who are ex-officio Justices of the Peace, and such other Courts as have been or may be established by law." Constitution of Georgia, Article VI, Section I, paragraph I (Ga. Code Ann. § 2-3601).

> "The judicial power of this state, both as to matters of law and equity, shall be vested in a supreme court, circuits courts, courts of probate, and in justices of the peace. . . . " Constitution of Wisconsin, Article VII, Section 2.

This contention of petitioner was answered by the Supreme Court of Georgia which held:

> "This argument confuses power and jurisdiction. Jurisdiction refers to the types of cases the court can hear and decide. Power includes the authority to perform any function reasonably necessary to effectuate its jurisdiction, improve the administration of justice, and protect the judiciary as an independent department of the government."
>
> *Wallace* v. *Wallace,* 225 Ga. 102 at 111, 166 S.E.2d 718 at 724 (1969), *cert. denied* 38 LW 3192, No. 117, October Term 1969.

The decisions of the Georgia Supreme Court with regard to the construction of the Georgia Constitution and the validity thereunder of legislative acts or orders of the court present no federal question for review by this Court. *Merchants' Bank* v. *Pennsylvania,* 167 U.S. 461 (1897).

Petitioner's primary reliance is apparently placed on his contention that the Act of the General Assembly, the Orders of the Supreme Court of Georgia, and the rules and regulations governing the operations of the State Bar as approved by the Supreme Court of Georgia are each and all without adequate authority and as a consequence the application of such rules to him constitutes a violation of his rights under the stated amendments to the United States Constitution. In the cases heretofore cited this contention has been adjudicated and the existence of due authority confirmed.

The Supreme Court of Georgia in division 7 of the opinion, review of which is sought, gave consideration on the merits to the contentions of petitioner that his rights under the First, Fifth and Fourteenth Amendments of the United States Constitution were violated. All of these contentions save one were specifically denied and that ruling is sustained in its entirety by the decision of this Court in *Lathrop* v. *Donohue, supra.* One facet of the complaint was left for further consideration and the case remanded to the trial court for that purpose. This was the contention that State Bar funds were being expended for purposes outside the purposes and authority of the State Bar. The Supreme Court of Georgia held in division 11 of its opinion that determination of this issue should be deferred for an original decision by the trial court upon evidence submitted. This will involve a detailed study of the purposes and authority of the State

Bar, the propriety of its expenditures, objections registered, if any, to any particular expenditures and these matters are not presently apparent from the record. Adjudication where there exists such an evidentiary vacuum would be premature. Even as to this position, authority is found in the case of *Lathrop* v. *Donohue, supra.*

CONCLUSION

For the foregoing reasons and under the authorities cited it is urged that the petition for writ of certiorari should be denied.

Respectfully submitted,

DONALD D. SMITH

MALLORY C. ATKINSON

ALEXANDER COCALIS

CHARLES L. GOWEN
Counsel of Record
Trust Company of Georgia Bldg.
Atlanta, Georgia 30303
Attorneys for the Respondents

CERTIFICATE OF SERVICE

I, Charles L. Gowen, counsel for Respondents, hereby certify that I have this day served 3 copies of the foregoing Brief of Respondents in Opposition to Petition for Writ of Certiorari upon opposing counsel by depositing 3 copies of the same in the United States Mail, properly addressed and with sufficient postage thereon, to each of the following:

G. Seals Aiken
1409-10 Candler Building
Atlanta, Georgia

George W. Finch
5051 Northside Drive, N. W.
Atlanta, Georgia

This ..... day of ....., 19.....

.....
CHARLES L. GOWEN

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

NO. 940

STEPHEN J. OLAH,
Petitioner,

v.

GARVIS L. SAMS, ALBERT SIDNEY PARKER, FRANK D. HOLCOMB, INDIVIDUALLY AND AS MEMBERS OF THE GRIEVANCE TRIBUNAL OF THE STATE DISCIPLINARY BOARD OF THE STATE BAR OF GEORGIA, IN DOCKET NO. 37; CLINTON J. MORGAN, THE DISTRICT REPRESENTATIVE OF THE STATE DISCIPLINARY BOARD, ASA W. CANDLER, CHAIRMAN OF SAID BOARD, AND THE STATE BAR OF GEORGIA,
Respondents.

REPLY BRIEF TO RESPONDENTS IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

G. SEALS AIKEN,
1409-10 Candler Bldg.,
Atlanta, Georgia,

GEORGE G. FINCH,
5051 Northside Drive, N.W.,
Atlanta, Georgia,

Attorneys for Petitioner.

TENNESSEE LAW PRINTERS, P. O. Box 277, Knoxville, Tennessee, Phone 525-4302

1-12-70-50

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QUESTION PRESENTED

Since Respondents seek to re-state the question, we seek to do so for brevity by further shortening it to:

DOES THE SYSTEM OF GOVERNMENT IN GEORGIA UNDER ITS EXISTING CONSTITUTION AUTHORIZE EITHER THE LEGISLATIVE BRANCH (BY TRANSFER AND ABROGATION OF ITS DUTIES) AND/OR THE JUDICIARY TO ASSUME THE POWER OVER LAWYERS AS HAS BEEN DONE?

Unified, incorporated or integrated bars have been created in some 30-odd states and territories; but in each instance broad powers and jurisdiction were granted, BY THE PEOPLE, either to the Legislative Branch, or to the Judiciary. Unlike these states and territories, *the Georgia Supreme Court does not have a general superintending power over all inferior courts, but under its extremely limited power as an appellate court it was without authority to legislate into existence the entity—State Bar.*

STATEMENTS UNTRUE IN RESPONDENT'S STATEMENT OF CASE

Counsel unequivocally show aspects (1) and (2) of the case as stated in respondent's brief to be untrue. Aspect (3) is of no importance whatever.

(1) The State Bar is an autonomous body, within its illegal charter as approved and written by the Supreme Court of Georgia by the law here attacked, which that Court refused twice to declare unconstitutional, choosing instead to claim plenipotentiary power to create this corporation by "inherent power", with alleged constitutional power flowing from the people by reason of being named "*FIRST*" in the list of courts in which "the judicial powers" of Georgia vest (Ga. Code Ann. § 2-3601.) Without doubt the State Bar is a self-governing body. But it does not here matter since the petitioner attacked the

creation to be absolutely null and void under the State and Federal Constitutions.

(2) The State Bar of Georgia does conduct its hearings, pronounce disciplinary sanctions, and its results as an autonomous body, and DOES NOT as respondent's brief implies, "by making recommendations and report to the courts." It is true that if the culprit elects to have a jury determination of questions of fact, these are heard by a jury.

(3) The oligarchal nature of this alleged democratic body is such that it would be a waste of time for any member to attack the expenditures of this organization. However, since under the ruling made, a trial will be had thereon, and THIS ISSUE IS NOT BEFORE THIS HONORABLE COURT. But unless we obtain a reversal of the Constitutional attacks, the rulings below will become the law of the case and the law of the land, and we cannot obtain a review thereafter, but will be bound thereby.

REBUTTAL ARGUMENT

Both *Clary v. Matthews*, 224 Ga. 82 (160 S.E.2d 338) and *Wilson v. State Bar*, 225 Ga. 343 (168 S.E.2d 584) involved specific rules and not the power, authority and jurisdiction of the Court to make the rules as in the instant case. While *Wallace v. Wallace*, 225 Ga. 102 (166 S.E. 2d 718) was a ruling against us in the Georgia Supreme Court, the consideration given this case by the Supreme Court of the United States (Certiorari denied 38 U.S.L. Week 3192, Nov. 24, 1969, No. 117, October Term 1968-69) involved merely a question of notice, and to rule otherwise would have required this Court to look for error not designated in the petition.

Lathrope v. Donohue, 367 U.S. 820 (1961) does not involve all of the constitutional attacks as were raised in the instant case, for in Wisconsin, the Supreme Court did not release an autonomous, oligarchal body upon the lawyers, but reserved control over discipline and disbarment unto itself as a Court matter. In Georgia the statute, rules and charter, in plain and unmistakable language, take control completely away from the Courts and place it in the illegal autonomous body known as State Bar of Georgia.

Petitioner will not make an extended argument here but insists on his rights under each of these constitutional provisions which have been stated in the petition. His right to the courts is protected by Ga. Code § 2-104; his right to benefit of counsel is protected by Ga. Code § 2-105; and his right to due process is protected by Ga. Code § 2-103; and his right to property—practicing law being a property right—is protected under Ga. Code § 2-301, and such property right shall not be taken from him unless adequate compensation is first paid; but if these are taken from him by the State Courts under the authority of null and void statutes or by judicial fiat, disguised as "inherent power", his rights as a citizen under the Federal Constitution have been violated.

Again, if Georgia fails in its Constitution to give its court of last resort the power to do what it did here, each and every right guaranteed to a citizen of the United States —in this case a lawyer—are violated as well.

The Fifth and Fourteenth Amendments extend to the protection of lawyers. See *Spevack v. Klein*, 385 U.S. 511. Note also that in this case, *Cohen v. Hurley*, 366 U.S. 117, was overruled.

Here, in the case sub judice, where the State law is unconstitutional, and, in fact, the Georgia Court of last resort, by its silence, confirms this, and claims inherent power to create this entity; and the Constitution of Georgia shows it is a court with extremely limited jurisdiction, there is no authority for the creation of the entity; and the acts of the Supreme Court of Georgia are void in violation of the Federal Constitution.

Lawyers also enjoy first class citizenship.

> *Slowchower v. Bd. of Education*, 350 U.S. 551; *Garrity v. New Jersey*, 385 U.S. 493.

Any restriction upon the practice of law must be valid.

> *Hackin v. Lockwood*, 361 F.2d 499; cert. denied 385 U.S. 960.

Inherent power of the Courts is like that of the legislative branch — "broad, but it is not unlimited." *Watkins v. U. S.*, 354 U.S. 178, 187.

Freedom to associate or not associate is an inseparable aspect of liberty, assured by the Due Process Clause of the Fourteenth Amendment. *N.A.A.C.P. v. Patterson*, 357 U.S. 449.

This is not a purely political question; or one over which the State Courts shall rule supreme, but is, indeed, one involving the rights of the individual, violated, by reason of the lack of constitutional authority to control him. *Pacific Telephone Co. v. Oregon*, 223 U.S. 118.

Since Congress cannot abdicate and transfer to others essential legislative functions with which it is vested, neither can the General Assembly of Georgia do so. *Schecter Corp. v. U. S.*, 295 U.S. 495.

A state law or ordinance violating the right of free speech guaranteed by the First Amendment is made applicable to the States by the Fourteenth Amendment. *Terminiello v. Chicago*, 337 U.S. 1; *Speiser v. Randall*, 357 U.S. 513.

A state law or state action must conform to the Federal Constitution's protection of individuals, and if same violates the due process clause of the Fourteenth Amendment, it is the duty of this Court to strike it down. *Board of Education v. Barnette*, 319 U.S. 624; *Wieman v. Updergraff*, 344 U.S. 183.

Although there may be a legal presumption supporting State legislation, nevertheless, the preferred place given our indispensable democratic freedoms requires this Court to take jurisdiction and grant the writ of certiorari. State regulation must not infringe constitutional rights. *Thomas v. Collins*, 323 U.S. 516.

Under Oregon law, its court of last resort may have exclusive jurisdiction under its common law and statutory powers to control the practice of law—but with the adoption of the common law in Georgia THERE WAS NO SUPREME COURT, WHICH WAS CREATED THEREAFTER. See *Lenske v. Oregon*, 384 U.S. 943; *Lenske v. Sercombe*, 266 F. Supp. 609.

Of course, without any doubt, our Supreme Court does possess some inherent power just as other courts do. And indeed the Legislature does possess so-called right to confer through legislation, judicial power on newly created established courts as authorized by the Constitution (city courts, civil and criminal courts, etc.). Certainly all courts possess inherent power—THE VERY WORD "COURT" IMPLIES SUCH POWER FROM THE

SOVEREIGN—BUT THE SOVEREIGN CONTROLS THAT POWER—AND THE PEOPLE OF GEORGIA ARE THE SOVEREIGN IN THIS WONDERFUL STATE—

—NOT THE COURTS—
—NOT THE LEGISLATURE—
—NOT THE EXECUTIVE BRANCH—

Why is there a great desire of this State Bar hierarchy to pass the proposed JUDICIAL ARTICLE?

(Note: Judicial article pertains to constitutional amendment giving wide powers to Supreme Court to control entire judicial system in Georgia).

ONE PURPOSE—to legalize, for the first time, everything that this organization has done since its illegal birth.

The western states particularly, and many of the others which have adopted the integrated, incorporated bar ALL HAVE SWEEPING CONSTITUTIONAL POWER GIVEN TO THE SUPREME COURT AS—"constitutionally conferred judicial power."

Of course, some, through judicial fiat, may have overstepped the bounds of power and jurisdiction in taking powers thereunder. Ours is a government of law, not of men—but men make up all branches of this great government—including the Judiciary. Yes, it takes the courage of big men to admit being wrong. Counsel was unable to convince the lower court of its error.

Again, let us look at the so-called "constitutionally conferred judicial power", and particularly such power as expressed in the Constitutions of the many Supreme Courts, or courts of last resort, which have assumed control of and the right to control or create integrated or incorporated bars.

STATE	CONSTITUTION
Wisconsin	—"general superintending power over all inferior courts."
Montana	
Florida	—"vested with all the power and authority necessary to carry out its rules..."
Hawaii	—"power to promulgate rules and regulations ... for all courts relating to process, practice, and appeals, which shall have the force and effect of law."
Kentucky	—"general control of inferior jurisdictions."
Idaho	—"no power in Legislature to deprive the judicial department of power or jurisdiction."
Louisiana	—"general supervision over all inferior courts."
Michigan	—"One court of justice" "Supreme Court shall have general superintending control over all courts ... every power except to remove a judge."
Missouri	—"general superintending control ... Supreme Court establishes rules of practice and procedure in all courts ... assignment of judges, etc."

Nebraska	—"power to control lower courts..."
North Carolina	—"general supervision over the proceedings of the inferior courts."
Oklahoma	—"original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts..."
South Dakota	—"shall have a general superintending control over all inferior courts."
Washington	
West Virginia	
Nevada	
Alabama	
California	
Hawaii	—"original jurisdiction"
Idaho	
Kansas	
Louisiana	or
Indiana	
Massachusetts	
Minnesota	"some original jurisdiction"
North Carolina	
New Mexico	

Oklahoma

Pennsylvania

North Dakota

Connecticut —"powers and jurisdiction of its courts shall be defined by law."

Georgia —"*court for the correction of errors of law alone—no original jurisdiction.*"

GEORGIA (PROPOSED CONSTITUTIONAL AMENDMENT)

"The Supreme Court shall have power to prescribe rules governing practice and procedure for the judicial system ... govern admission to the bar, organization of the bar, standards ... etc. ..."

Of course, if the Judicial Article is ever passed by the General Assembly and adopted by the People, there is no doubt of the power in the Supreme Court to create the State Bar. WILL THE PEOPLE EVER ADOPT THE PROPOSED AMENDMENT?

Usurpation of power is tyranny of the first order. Why not wait until the People grant such power to our court of last resort, and not assume the power out of thin air?

There simply is complete absence of "constitutionally conferred judicial power" in the Georgia Supreme Court to control the bar of other constitutional courts such as the Court of Appeals and the Superior Courts. Constitution of 1943; Code Ann. § 2-3601.

Respondents claim that the State Bar was created under the inherent power of the court or rather a joint venture of the General Assembly and the Court. State Bar con-

tinues to argue this strenuously. We show that even though courts have certain inherent powers, it does not amount to power to control other courts, and to control the entire legal profession from top to bottom. At the outset we recognize that each separate court has inherent power to control its own court and to regulate the lawyers practicing before that court. However, the question is: "Does the Georgia court system give its court of last resort (now the Supreme Court) control over all others whereby it may regulate the entire judicial system?"

The history of the Georgia Judicial system clearly shows that for the first 70 years from Colonial to Statehood to 1845 THERE WAS NO SUPREME COURT IN GEORGIA. In fact, from 1835 to 1845, even though the Constitution authorized one, the PEOPLE through its General Assembly refused to breathe life into the Supreme Court. (Constitution of 1777; Constitution of 1789; Constitution of 1798, amended 1834-1835 to create a Supreme Court). Legislation thereafter breathed life into it in 1845, some 10 years later. This constitutional amendment expressly stated that it was for the correction of errors of law only WITH NO ORIGINAL JURISDICTION. THIS HAS BEEN REPEATED IN EVERY CONSTITUTION ADOPTED SINCE THAT TIME.

Thus it is clear our Supreme Court's origin did not follow that of the Supreme Court of the United States; and our Judiciary did not rise up out of the people as that court did as titular head of the Federal Judiciary at the very outset; as head of the Judiciary with a Chief Justice of the United States as its leader. The people of Georgia were leary of the United States Supreme Court from the very beginning because of the Indian Question, and thus did not favor the creation of such a court in this State.

Later, in the amendment to the Constitution of 1877 in 1906 the Court of Appeals was created—NOT SUBSERVIENT TO THE SUPREME COURT BUT TAKING PART OF THE SUBJECT MATTER FROM THE SUPREME COURT. No certiorari was allowed although it could certify constitutional questions. Only after a clerk conceived the idea of receiving fees by certiorari was a constitutional amendment passed authorizing and making the Court of Appeals subservient to our Supreme Court, as it exists today in the Constitution of 1945. (See McElreath on Georgia Constitutions)

Thus the People of this State have never given any absolute power of control to the Supreme Court to control the Judiciary in this State. Else, why attempt a constitutional amendment to obtain same as is found in the New Proposed Judicial Article for Georgia, now under consideration in the Georgia General Assembly? House Resolution on this question is as follows:

> "The Supreme Court shall have the power to prescribe rules governing practice and procedure for the judicial system. The Supreme Court shall by rule govern admission to the bar, organization of the bar, standards of professional conduct and the discipline of members of the bar."

If it already had this all-powerful inherent power then why ask the People to assure it? Or rather, if it grabs the power at this time, then it does so by Judicial Fiat, so abhorred by all.

With pride we state that heretofore the Supreme Court of Georgia has never assumed any authority over the Superior Courts or the Court of Appeals which was not spelled out in no uncertain terms in the Constitution by the People of Georgia.

How has disbarment been handled? By the courts separately. In Superior courts by trial—in the Court of Appeals under its own inherent power—in the Supreme Court under its own inherent power. How has contempt been punished? In the Superior Court; in the Court of Appeals; and in the Supreme Court—each separately and controlling its own destiny through its own inherent power.

When the Supreme Court of Georgia came into existence in 1845 (Acts 1845, Cobb, 448; Acts 1884-5, p. 45; Acts 1935, p. 161, 162) its powers were defined by statutes of the General Assembly, and with the utmost complaisance the Supreme Court from that time forward accepted same, including the limitations on its power, saying "nary a word" by way of objection. These limitations were implicit in the following statutes:

Code § 24-3901. The Supreme Court has authority—

1. To exercise appellate jurisdiction, *and that only*, and in no case to hear facts or examine witnesses.

5. To establish, amend, and alter *its own rules of practice*, and to regulate the admission of attorneys.

7. To exercise such other powers, not contrary to the Constitution, as are or may be *given it by law*.

Why didn't the Supreme Court indignantly rub out rule 5, and proclaim that it had the right to establish *all rules of practice*, and not just *its own rules of practice*&

And in 1896 the General Assembly enacted another statute (Ga. L. 1896, pp. 42, 44) bristling with limitations as to the powers of the Supreme Court, as follows, to-wit:

"Code § 24-4016. The Court shall have full power and authority to make all such rules, *not in conflict with the Constitution or laws*, as may be necessary for carrying the Constitution into effect and regulating *its* proceedings thereunder. To these ends it may, by such rules, provide and declare when the Court shall sit 'in a body' and when in separate divisions, how *its* minutes shall be kept, how the cases upon *its* dockets shall be apportioned and divided between the two divisions; at what time and to what extent changes shall be made in the personnel thereof, and generally may *make all such regulations as to practice and procedure which experience may show to be convenient and expedient for the proper transaction of its business*, with due regard to the rights of parties and counsel concerned." (Emphasis added)

What Court were these matters to affect? Were all of the courts to be affected? No indeed! ONLY THE SUPREME COURT and its business was affected thereby. And note that said powers might be exercised only "when not in conflict with the Constitution *or laws*."

If the Supreme Court has had inherent power all of the while to regulate all lawyers, and "supervise the practice of law generally", why did it remain silent so long with these statutes on the statute-books? How is it that in 1896 the General Assembly and the Supreme Court of that era did not know about this "inherent power" so recently located and declared by the Supreme Court?

See *Ward v. Big Apple Super Markets*, 223 Ga. 756, at 764:

"Before and since the adoption of the 1945 Constitution this court has deliberately and consistently required a unanimous decision to overrule a unanimous decision.

See Cody v. Cody, 221 Ga. 677; Hood v. First Nat. Bank, 219 Ga. 283; Rivers v. Cole Corp., 209 Ga. 406. Indeed, by concurrence of seven justices, whereas Code §6-1611 requires only six, we demonstrate that we do not recognize it. This Court since its creation in 1845 has considered itself bound by its unanimous decisions and will respect and follow such decisions, overruling them only by a unanimous court which can be done without legislative authority."

The People, the lawyers, and this petitioner are interested in:

"maintaining high standards of conduct in the legal profession;"

"aiding in the efficient administration of justice;"

"to foster among the members of the Bar of this State the principles of duty and service to the public;"

"to improve the administration of justice;" and

"to advance the science of law."

But it is petitioner's firm belief that this be done by constitutionally authorized legislation, and not by court legislation by judicial fiat.

CONCLUSION

Of necessity, if there exists no authority of law in Georgia authorizing the Georgia Supreme Court to do what it did—the Constitutional rights guaranteed to the petitioner by the United States Constitution have been violated.

Respectfully submitted,

G. SEALS AIKEN,
1409-10 Candler Bldg.,
Atlanta, Georgia,

GEORGE G. FINCH,
5051 Northside Drive, N.W.,
Atlanta, Georgia,

Attorneys for the Petitioner.